

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of

A National Broadband Plan for Our Future

)
)
)

GN Docket No. 09-51

COMMENTS OF KODIAK KENAI CABLE COMPANY, LLC

Heather H. Grahame
DORSEY & WHITNEY LLP
1031 West 4th Avenue, Suite 600
Anchorage, AK 99501

Stefan M. Lopatkiewicz
DORSEY & WHITNEY LLP
1050 Connecticut Avenue, N.W.
Suite 1250
Washington, D.C. 20036
202-442-3553

Counsel for Kodiak Kenai Cable, LLC

June 8, 2009

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. ESTABLISHING GOALS AND BENCHMARKS	4
1. Defining Broadband.....	4
2. Defining Access to Broadband	8
3. Measuring Progress.....	9
4. Role of Market Analysis	10
III. EFFECTIVE AND EFFICIENT MECHANISMS OF ENSURING ACCESS.....	11
1. Market Mechanisms.....	11
2. Universal Service Fund Programs	12
3. Open Networks	15
4. Competition.....	16
IV. AFFORDABILITY AND MAXIMUM UTILIZATION	17
V. SPECIFIC POLICY GOALS OF THE NATIONAL BROADBAND PLAN	18
VI. RELATIONSHIP BETWEEN RECOVERY ACT AND OTHER STATUTORY PROVISIONS	20
VII. CONCLUSION	22

SUMMARY

As part of an effective and meaningful national broadband plan, a unified definition of “broadband” should be adopted, which should subsume the alternative statutory and regulatory terms “advanced services” and “Internet access.” In the implementation of the plan, all federal agencies should adopt and utilize this common definition.

The definition of “broadband” should be a functional one, not necessarily tied to a specific speed for data transmission but, instead, one capable of supporting interactive, real-time, full-motion, high definition video content in both a downstream and upstream mode between the end user and the content source. The definition should not vary on the basis of technology, or it will not be technologically neutral. Nor should the definition be geographically differentiated. Rural parts of the country should be entitled to fulfillment of the same broadband standards as urban ones. The plan should include a commitment that broadband access will be made available to 100 percent of the population. If the plan does not fulfill these standards, it will raise the specter of institutionalizing the current Digital Divide, rather than overcoming it.

A rural broadband strategy envisioning universal access to broadband should constitute a cornerstone of the national broadband plan, since the unserved and underserved areas of the country remain overwhelmingly rural in nature. The plan should be constructed on a national policy encouraging private markets to deploy ubiquitous broadband capabilities through competitive service providers. In order to support this goal in rural portions of the country, the plan should recognize as key the deployment of backbone networks capable of delivering robust broadband capacity to rural areas. Where private business models are unable to justify the commercial construction of such infrastructure, the plan should recognize the need for and appropriateness of public support for such transport facilities.

The Commission's *Internet Policy Statement* should be adopted as a binding rule and made applicable to publicly supported backbone broadband networks. In addition, operators of such wholesale networks should be entitled to interconnect with any other networks of their choice in keeping with the spirit of Sections 251(a) and (b) of the Communications Act.

In addition to championing the deployment of backbone wholesale broadband networks through the use of public funds, where necessary and appropriate, the national broadband plan should recognize broadband as a critical public service. Because broadband access must be affordable if it is to be useful to the public, the Commission should classify broadband as a supported service under the universal service High Cost and Low Income Support programs. It is recognized that this classification might require some degree of re-regulation of broadband services, and that providers of broadband transport capacity should, in turn, become contributors to the Universal Service Fund.

The national broadband plan should be viewed as a reaffirmation and rationalization of existing federal statutory policies. As established in Section 254(b) of the Communications Act, broadband should be made available in rural areas on terms and at rates "reasonably comparable" to those prevailing in urban areas. In keeping with both Sections 254(b) and 706 of the Act, the broadband plan should set as a goal universal access to broadband facilities and services, including in rural and other hard-to-serve parts of the country. Finally, as contemplated in Section 230(b) of the Act, the national broadband plan should promote broadband competition among last-mile retail providers of Internet access service.

In the Matter of)
) GN Docket 09-51
A National Broadband Plan for our Future)

Kodiak Kenai Cable Company, LLC (“KKCC”), by its undersigned counsel, hereby submits its comments in response to the Commission’s Notice of Inquiry in this docket released on April 8, 2009. The Commission launched this inquiry in response to Congress’ mandate in the American Recovery and Reinvestment Act (“Recovery Act”)¹ that the Commission create a national broadband plan.

KKCC was formed in 2001 as a limited liability company by two Alaska native corporations -- Old Harbor Native Corporation and the Ouzinkie Native Corporation -- for the purpose of designing, constructing and operating the Kodiak Kenai Fiber Link.² The Fiber Link is a 600-mile submarine fiber optic telecommunications system connecting the 60,000 people of Kodiak Island and the Kenai Peninsula of Alaska with Anchorage. The system was completed on-time and within budget in 2006, was placed in service in 2007, and has since operated successfully and without any interruption in service.³

KKCC operates as a “carrier’s carrier” by offering the high-speed broadband capacity of the Fiber Link on a non-discriminatory basis to local and long distance exchange carriers, who then provide high-speed Internet, telephone, video and other data services to the rural

¹ Pub. L. No. 111-5, 123 Stat. 115 (Feb. 17, 2009), § 6001(k)(1).

² Old Harbor Native Corporation and Ouzinkie Native Corporation are Native village corporations established by Congress in 1971 under the terms of the Alaska Native Claims Settlement Act (“ANCSA”).

³ See the Kodiak Kenai Cable Company's website at <http://www.KKFL.info>.

communities of the Kenai Peninsula and Kodiak Island.⁴ KKCC is a socially and economically disadvantaged small business concern as defined under Section 8(a) of the Small Business Act, 18 U.S.C. § 637.

KKCC intends to replicate the success of the Fiber Link by bringing the same high-speed broadband connectivity to the rural communities of western and northern Alaska. Nearly 40 percent of Alaska's land area – the entire western half of the state (equal to approximately 16 percent of the land mass of the 48 contiguous states) – lacks reliable, high speed broadband connectivity. If there is any Internet service at all, it is provided by sporadic satellite service that is plagued by limited capacity and frequent disruptions.⁵ Moreover, the western part of the state has some of the most remote and impoverished communities in the United States. Unemployment ranges up to 90 percent and the poverty rate is as high as 50 percent. The economy is primarily dependent on commercial fishing and federal and state jobs, and many rural residents remain highly dependent on hunting and fishing for their everyday subsistence needs. The communities are isolated by rugged terrain, weather, and the lack of any road or rail system connecting them to any urban area.

KKCC has developed a business plan to construct a new submarine fiber optic cable system extending from Kodiak Island to the Aleutian Islands, to communities in the Bristol Bay region, then north to Bethel, Nome, Kotzebue, Barrow and Prudhoe Bay, effectively

⁴ In addition to bringing high-speed connectivity to the residents of these communities, the Fiber Link connects the Alaska Aerospace Development Corporation's Launch Complex at Narrow Cape; provides redundancy to the Turnagain Arm communication corridor (which is subject to frequent seismic events); and connects the community's schools, industry, and commerce to the world with real-time broadband Internet access.

⁵ Recent comments filed with the Federal Communications Commission by the Regulatory Commission of Alaska, General Communication, Inc. and KKCC all agree that satellite service to rural Alaska is inadequate for broadband applications. See Regulatory Commission of Alaska, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009); General Communication, Inc., Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009); Kodiak Kenai Cable Company, Comments, *Report on Rural Broadband Strategy*, GN Docket No. 09-29 (March 25, 2009).

creating a fiber ring along the western and northern coasts of the state.⁶ Once completed, service providers will be able to utilize the cable with their existing infrastructure and bring reliable, high speed broadband connectivity to over 150 communities in western Alaska that currently are without such service. For the first time, it will connect the region's people, hospitals, medical clinics, schools, remote university campuses, public safety offices, U.S. Coast Guard communications sites, commerce and industry with real-time telecommunications and Internet services.⁷

KKCC has previously submitted comments in response to the Commission's public notice looking to the development of a national rural broadband strategy,⁸ and in response to the joint request of the National Telecommunications and Information Administration ("NTIA") and the Rural Utilities Service ("RUS") for information regarding the authority given to those agencies under the Recovery Act to make grants and loans for the deployment of broadband systems.⁹ The Notice of Inquiry in this proceeding is a far-ranging document by which the Commission seeks to develop a public record on an extensive range of factual, policy and procedural issues that will form the basis for the first comprehensive articulation of a broadband policy affecting all aspects of urban and rural America. In light of the vast unserved region that represents KKCC's constituency, the comments that follow will focus on broadband policy objectives specific to rural areas. Acting Chairman Copps has described his report on a Rural Broadband Strategy ("Rural Broadband Report") as a "prelude to, and a building block for, the national broadband plan."¹⁰ Because, as that Report declares, "relying

⁶ See <http://www.northernfiberlink.info/pages/routes.html>.

⁷ See <http://www.northernfiberlink.info/pages/projectscope/projectscope.html>.

⁸ DA 09-561, released March 10, 2009. See note 5, *supra*.

⁹ Comments of Kodiak Kenai Cable Company, LLC, Docket No. 090309298-9299-01, filed April 13, 2009.

¹⁰ "Bringing Broadband to Rural America: Report on a Rural Broadband Strategy," May 22, 2009.

on market forces alone will not bring robust and affordable broadband services to all parts of rural America,”¹¹ KKCC submits that a national rural broadband strategy of necessity constitutes the cornerstone of a national broadband policy. Our comments respond to the Commission’s fields of inquiry in the order in which they appear in the Notice of Inquiry.

II. ESTABLISHING GOALS AND BENCHMARKS

1. Defining Broadband

KKCC agrees that the Commission should focus on a single functional term, “broadband,” which will effectively encompass the statutory term “advanced services” as well as the concept of “Internet access.”¹² The concept of a commodity called “broadband” has entered the public consciousness as a critical infrastructure requirement. Focusing on this unitary term, therefore, will help clarify and advance the public discussion on how it should be defined, regulated and implemented. Section 706 of the Communications Act has already effectively paraphrased the more amorphous term, “advanced services,” to mean broadband.¹³ Moreover, as telecommunications and information services become increasingly IP-based, the term “Internet access” no longer appears to capture the full economic import of the role of broadband. Settling on a single definition that embodies each of these alternatively used terms will assist in the current effort to establish national objectives and priorities regarding broadband.

For the same reason, the unified definition of broadband is one that all agencies of the federal government should agree upon and use in implementing programs and policies under their respective jurisdictions. Congress expressed its expectation to this effect in the Recovery Act by according the Commission a consultative role in the development of

¹¹ *Id.*, ¶ 13.

¹² Notice of Inquiry, ¶ 16.

¹³ Pub. L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153; 47 U.S.C. § 157 note.

definitions, including that of “broadband,” to be employed by NTIA and RUS in implementing their broadband grant- and loan-making authority.¹⁴ Although the Commission’s issuance of the national broadband plan is not scheduled until February 2010, it is both logical and important that the notices of funding availability to be issued by the NTIA and RUS pursuant to the Recovery Act by the end of this month should use the same working definition that will be featured in the plan when it is subsequently published.

The adoption of a comprehensive national broadband plan clearly demands that the definition of broadband be one that will support the burgeoning applications of the Internet, not only in the present but for the foreseeable future. Toward this end, KKCC urges the Commission to adopt a functional definition of broadband, rather than one that is delimited in terms of capacity and data speed which can become antiquated almost as soon as it is agreed upon. KKCC proposes that “broadband” be defined as enabling, at a minimum, the delivery of interactive, real-time and full-motion, high definition video content, both in a downstream and upstream mode to and from the end user. A transmission pipe that is incapable of delivering video content fulfilling this range of qualities and characteristics will be unable to provide adequate levels of support for such critical applications in the presently unserved areas of Alaska as interactive distance learning and effective telehealth/telemedicine functionalities. In addition, KKCC believes the definition of “broadband” needs to be a sufficiently robust to accommodate and support the rapid migration to social networking and mobile video applications on the Internet which in particular are being embraced by younger consumers.

Finally, the definition should incorporate a high level of reliability. A transmission medium subject to prolonged seasonal, weather-related or other episodic outages will

¹⁴ Recovery Act, § 6001(a). See Public Notice, “Comment Procedures Established Requiring the Commission’s Consultative Role in the Broadband Provisions of the Recovery Act,” DA 09-668, released March 24, 2009.

continue to inhibit essential applications, such as telemedicine and public safety, that demand uninterrupted service.

Nor does any legitimate reason exist to vary this definition depending on which technology is employed to provide the broadband service, or which region is being served.¹⁵ The functionality of broadband delivery from the user's perspective, and not that of the service provider, must be viewed as of paramount importance if it is to be effective. It would thwart this objective to compromise the governing definition of broadband in order to accommodate the technological shortcomings of a delivery mechanism, and it would do violence to the principle of technological neutrality. As noted in Part I above, it is generally recognized that satellite technology is incapable of delivering adequate throughput as far north as Alaska to support robust broadband service. By adopting a reduced broadband standard for satellite delivery (without regard to the satellite's specific geographic footprint), the Commission would effectively sanction a standard that deprives users in Alaska of meaningful access to broadband capabilities. This would produce something short of a truly national plan, a result at variance with the Recovery Act's mandate.

Equally harmful would be implementation of a broadband deployment standard on a geographically differentiated basis. Section 254(b) of the Communications Act states that consumers "in all regions of the Nation, including ...those in rural, insular and high cost areas, should have access to ...advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas."¹⁶ Section 706 of the Act charges the Commission and state regulatory commissions to "encourage the deployment on a reasonable and timely basis of advanced

¹⁵ Notice of Inquiry, ¶ 19.

¹⁶ See *id.*, ¶ 111.

telecommunications capability to *all* Americans.”¹⁷ If a lower standard for what qualifies as broadband is accepted in rural areas, the Commission would do violence to these Congressional statements of policy by effectively depriving rural consumers and businesses of access to broadband “reasonably comparable” to that available in urban areas. In effect, the Commission would institutionalize, rather than seek to overcome, the “Digital Divide” separating the haves from the have-nots in the United States in the current information era.

Nor should the number of simultaneous users on a shared network be permitted to reduce the acceptable speed or data rate of a broadband network.¹⁸ As explained above, to be meaningful, the definition of broadband should be based on minimally accepted functional standards from the end user’s perspective and, more specifically, the *individual* end user’s perspective. Few consumers of broadband services will have the luxury of controlling dedicated channels of access. The definition adopted as the basis for the national broadband plan should assume, therefore, the individual end user’s competition for access by means of shared networks, and the functional standard should be measured by the access available to each individual user. In other words, to be meaningful, the national broadband plan should facilitate the development of a sufficiently robust system to enable simultaneous access by multiple end users via shared networks.

The components of a functionally meaningful definition of broadband directly relate to the final question in this section of the Notice of Inquiry: to what extent should the Commission’s consideration of broadband capability take account of the middle mile network?¹⁹ The Commission has here touched on a key issue, because end users in rural areas can only benefit from broadband services if an adequate backbone network has been

¹⁷ See *id.*, ¶ 110.

¹⁸ *Id.*, ¶ 20.

¹⁹ *Id.*, ¶ 17.

deployed. The necessity of such backbone networks as a precursor to the delivery of broadband services to rural end users has been documented in the Commission's Rural Broadband Report.²⁰ KKCC submits that, where the private sector models have failed to provide backbone connectivity in rural areas, the identification of public sector support for the deployment of such critical transport facilities must be addressed as part of an effective national broadband plan.

2. Defining Access to Broadband

In its 2005 policy statement to promote the "open and interconnected nature of the Public Internet,"²¹ the Commission adopted non-binding principles related to consumers' entitlement to access lawful content and applications of their choice on the Internet by means of competitive service providers. KKCC concurs that competition among last-mile Internet service providers should be encouraged as part of the national broadband plan as a means of assuring end users access to applications and content of their choice at competitive rates.²² In rural areas, this objective can most directly and effectively be achieved through the deployment of backbone networks that are operated on a carrier-neutral basis, thereby providing last-mile providers the opportunity to compete for end users in currently unserved and underserved areas. To the extent such systems cannot be justified under commercial business models, public support for their deployment should be provided, thereby encouraging the development of a critical, private, last-mile market to evolve. Where such limited public intervention occurs, KKCC believes an appropriate condition for subsidization

²⁰ Rural Broadband Report, ¶¶ 114-20. See also prefiled testimony of Mark G. Seifert, Senior Advisor to the Assistant Secretary, NTIA, Hearing on "Oversight of the American Recovery and Reinvestment Act of 2009: Broadband," April 2, 2009, at 2.

²¹ In the Matter of Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, *Policy Statement*, FCC 05-151, released September 23, 2005 ("*Internet Policy Statement*").

²² Notice of Inquiry, ¶ 25.

of middle-mile solutions is the requirement for carrier neutrality so that all last-mile providers can access the capacity on a non-discriminatory basis. The resulting competition will also make last-mile services more affordable, a material determinant of whether access to broadband exists as a practical matter.²³

Inasmuch as incorporation of the *Internet Policy Statement* in the national broadband plan will reinforce the provision of carrier-neutral middle-mile facilities, KKCC submits that the Policy Statement should be adopted as a formal rule, following a statutory rulemaking process.²⁴ The officially “non-enforceable” nature of the current Policy Statement is unnecessarily ambiguous, and raises the prospect for legal challenge to the Commission’s exercise of authority.²⁵ Moreover, Congress has clearly signified its support for mandatory enforcement of the *Policy Statement* in enacting Section 6001(j) of the Recovery Act, wherein it required that grant awards under the Act’s Broadband Technology Opportunity Program require “at a minimum” adherence to the principles contained in the Commission’s *Internet Policy Statement*.

3. Measuring Progress

Given the uniquely large and dynamic nature of the United States private-market economy, KKCC suggests that the Commission should be cautious in drawing comparisons to the experience of other countries, even developed European ones, in the formulation of the national broadband plan.²⁶ Nevertheless, where the private market has failed to deliver broadband capabilities in rural areas comparable to those available in urban areas following

²³ *Id.*, ¶ 27.

²⁴ *Id.*, ¶ 24.

²⁵ See, e.g., Formal Complaint of Free Press and Public Knowledge Against Comcast Corporation for Secretly Degrading Peer-to-Peer Applications, *Memorandum Opinion & Order*, FCC 08-183, released August 20, 2008, Dissenting Statement of Commissioner McDowell.

²⁶ Notice of Inquiry, ¶ 31.

years of deployment of private broadband networks, KKCC submits that public intervention, possibly through public-private partnerships, must be considered as a means of overcoming the persistent Digital Divide between urban and rural parts of the country.²⁷ In this regard, KKCC notes that the Australian government's proposal to construct a national fiber network capable of delivering advanced broadband services on a wholesale basis to all regions of the country has, for good reason, attracted positive attention from the Obama Administration.²⁸ Australia is a useful model for rural broadband strategies in the United States, given its vast territories with widely dispersed populations, similar to extreme portions of the United States, such as western Alaska.

4. Role of Market Analysis

As discussed above, broadband capabilities should be measured from the perspective of the end user.²⁹ Moreover, this functional analysis must be conducted without distinction between rural and urban areas. For this reason, ensuring the availability of robust backbone networks in rural areas must constitute a basic element of the national broadband plan.

²⁷ As the Rural Broadband Report states: "A complementary government role in broadband deployment can yield advantages that a free market solution cannot achieve alone. For example, government involvement in rural broadband may increase the efficiency and reliability of local services, such as law enforcement and emergency services; promote job growth and economic development by attracting and retaining businesses and increasing use of technology in a community; provide educational benefits, both for local schools and those seeking education online; and generally generate the indirect benefits to America that private deployers may not consider in their cost-benefit profit assessments." ¶ 120.

²⁸ "Obama White House Looks to Taxpayer-Funded Australian Broadband Plan as a Model for Rural Broadband Deployment in the U.S.," Independent Telecom Report, June 1, 2009. Susan Crawford, an adviser to the President for science and technology and a member of the National Economic Council, is quoted as stating that governments like those of Australia, Canada and Singapore, that view broadband as a national utility "understand that a wholesale network can deliver massive social and economic benefits."

²⁹ Notice of Inquiry, ¶ 35.

III. EFFECTIVE AND EFFICIENT MECHANISMS OF ENSURING ACCESS

1. Market Mechanisms

KKCC believes that the national broadband plan should be founded on a national policy that encourages private markets to operate as effectively and efficiently as possible in the deployment of ubiquitous broadband capabilities. At the same time, as demonstrated by the immense unserved regions of western Alaska, market mechanisms have been unable to deliver in these areas facilities capable of supporting the minimum broadband standards that will become part of such a national plan.³⁰ Since these areas remain today unserved, consolidation in the telecommunications industry experienced in many parts of the country has exerted no market impact on the delivery of broadband services in these regions. As a result, an effective national broadband plan must include recognition that some level of governmental or other public support is required to deploy infrastructure in these parts of the country.³¹ Bipartisan Congressional recognition of this fact has existed for a number of years, as reflected in the 2002 and 2008 Farm Bills which authorized RUS to make broadband loans and loan guaranties available in rural areas.

The national broadband plan must include a commitment to bring minimally acceptable levels of broadband access to 100 percent of the country.³² Anything short of that goal would forsake the national objectives already embodied in Sections 254(b) and 706 of the Communications Act, and would sanction portions of the country's citizenry to be left on the wrong side of the Digital Divide. In order to make this undertaking realistic and achievable, in rural areas the national plan should focus on support for middle-mile solutions provided on a carrier-neutral basis by providers who are not engaged in serving directly the

³⁰ *Id.*, ¶ 37.

³¹ *Id.*, ¶ 36.

³² *Id.*, ¶ 38.

retail market. The funding for broadband deployment made available under the Recovery Act for distribution by NTIA and RUS in the form of grants and loans represents an immediate opportunity for public support for such middle-mile requirements. The nondiscrimination and network interconnection obligations that accompany the NTIA's grant-making authority under the Act are fully consistent with a standard of carrier-neutral operation of such facilities.³³ Prospectively, KKCC submits that the use of tax incentives should also be considered as another form of public support to encourage the deployment of backbone networks supplying broadband to rural markets where a commercial business case cannot be made for such infrastructure.³⁴

2. Universal Service Fund Programs

As part of the national broadband plan, KKCC supports adding broadband transport as a category of service under the Commission's universal service program. Broadband is today recognized, as was telephone voice service generations ago, as a critical service requirement. As Chairman Copps' Rural Broadband Report declares: "Broadband is the interstate highway of the 21st century for small towns and rural communities, the vital connection to the broader nation and, increasingly, the global economy."³⁵ Access to the Internet serves today as a driver for the economy, both nationally and globally. In rural areas, it is recognized as essential to the delivery of educational and of telehealth/telemedicine

³³ Recovery Act, § 6001(j). Because at least the first tranche of Recovery Act broadband funding awards is expected to be completed prior to the scheduled release of the national broadband plan report in February 2010, the opportunity to integrate the national broadband plan's support for middle-mile backbone networks serving rural areas will be limited. KKCC believes that the Commission should be provided with full access to the project reports submitted by recipients of early-tranche broadband grants and loans to assist it in its development of the national broadband plan. See Notice of Inquiry, ¶ 62.

³⁴ Such tax incentives must, of course, originate with specific Congressional authority, not in an agency rule making.

³⁵ Rural Broadband Report, ¶ 25. See ¶¶ 33-42.

services. Nationally, it plays a vital role in public safety networks. In short, broadband is no longer a luxury.

As discussed above, in order to be accessible to the population at large, broadband must not only be made physically available in all parts of the country, but must be affordable. Affordability, in turn, is determined by the cost of the service on a per-customer basis. This economic reality was recognized years ago with respect to voice telephony service. In order to make voice service “universally” available, its offering to users in high-cost, hard-to-serve areas of the country had to be made affordable. The Commission’s High-Cost Support program accomplishes this by comparing the loop cost of serving customers in high-cost areas with a national average and, essentially, subsidizing the carrier to keep the per-customer cost of providing the service at or near the national average and, thereby, “affordable.”

As the Commission has noted, carriers providing broadband services on networks used to deliver telephony to residential and business users in high-cost areas indirectly benefit from the High-Cost Support program’s support for the local loop.³⁶ However, the cost for actually bringing broadband content to the end user – specifically, the cost of transport for accessing the Internet – is not supported under the program’s current rules. It is this service, therefore, that KKCC argues should be recognized as a supported service in keeping with broadband’s recognition as a critical service in the public interest. The universal service model provides public support on a targeted basis by providing subsidy only in those areas of the country where the cost of obtaining service is in excess of the national average for comparable service. By subsidizing the carrier’s provision of supported services to the end user, the universal service program would help fund the deployment of broadband infrastructure in those rural areas where a business case for such deployment cannot be made.

³⁶ Notice of Inquiry, ¶ 39.

For those broadband facilities that are deployed with the support of Recovery Act grants or loans, the cost of such construction would presumably need to be excluded from the carrier's supported cost base in order to avoid the prospect for the carrier "double dipping" in its recovery of such expenses also through the High-Cost Support program.³⁷ This concern, however, while important, would likely be of short-term duration, since the Recovery Act broadband program has not been established as a continuing source of infrastructure support, but will have a limited life, with all funding to be disbursed by September 30, 2010. KKCC similarly supports a parallel expansion of the Low-Income Support program to enable end users meeting the program's income requirements to qualify for access at highly subsidized rates comparable to those presently made available under the Linkup and Lifeline programs for telephony services. Of course, KKCC acknowledges that inclusion of broadband transport providers as beneficiaries of the universal service program should bring with it a concomitant requirement for operators of such facilities to contribute to the fund.³⁸

Given the fact that Section 254(b) of the Communications Act anticipates the use of universal service support for "advanced services," it is likely that enlargement of the High-Cost Support program to encompass broadband access to content could be justified within the present statutory framework. On the other hand, expansion of the universal service program to encompass broadband transport capacity, without revisiting the 1996 Telecommunications Act, would present the question of whether broadband service providers would have to be classified as common carriers to qualify for support.³⁹ This regulatory caveat is far from

³⁷ *Id.*, ¶ 40.

³⁸ *Id.*, ¶ 41.

³⁹ 47 U.S.C. § 214(e).

academic, since the Commission has largely deregulated broadband as an “information” service.⁴⁰

3. Open Networks

As previously observed, the policy underpinning of the national broadband plan should be one favoring the efficient and effective operation of private market mechanisms in the delivery of broadband services to the end user. The Commission’s adoption of the *Internet Policy Statement* as part of the national broadband plan could serve to bolster competition among last-mile service providers for the benefit of the end user.⁴¹ To that extent, KKCC concurs that adoption of the *Internet Policy Statement* in the form of binding rules could play a salutary role as part of the broadband plan.⁴²

Of more immediate importance from KKCC’s perspective, however, is that the national broadband plan recognize the vital role for backbone middle-mile networks in the delivery of broadband to rural areas, and the need for public support for such networks. As a condition for receipt of such public support, backbone networks serving rural areas should be operated on a carrier-neutral basis, with the transport providers not offering retail service, thereby allowing all last-mile providers access to such transport capacity on a non-discriminatory basis.

It is also important that broadband facilities that are deployed with the assistance of public funding -- including tax incentives -- have the right to interconnect with other carriers, so that no carrier can stymie competition by creating a self-serving bottleneck. A model for this requirement is found in Section 251 of the 1996 Telecommunications Act, which

⁴⁰ Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities, *Declaratory Ruling and Notice of Proposed Rule Making*, 17 FCC Rcd 4798 (2002); Appropriate Framework for Broadband Access to the Interstate Over Wireline Facilities, *Report and Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 14853 (2005).

⁴¹ Notice of Inquiry, ¶¶ 47-48.

⁴² See discussion in Section II.2 *supra*.

establishes basic interconnection requirements to enable competition in the local exchange sector. Subsection (a) of this provision states simply that “[e]ach telecommunications carrier has the duty...to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.” For backbone networks developed with public assistance to provide long haul and middle-mile access to unserved and underserved areas, the inability to interconnect with last-mile carriers would thwart the very purpose which the public funding was intended to accomplish.

KKCC submits, therefore, that backbone, wholesale carriers should have the right to interconnect with any other carrier of their choosing. Toward this end, the principles of Section 251(a) of the 1996 Telecommunications Act should be made a condition to the operation of publicly supported backbone systems. It is further noted that the requirements found in Section 251(b) of the Act would have an equally salutary effect when applied to public funding recipients. In accordance with that provision, recipients of public grants, loans and tax incentives should also be required to avoid installing network features, functions or capabilities that will violate the standards found in Section 255 of the Act ensuring access to the network by persons with disabilities, and Section 256 of the Act which seeks to promote “nondiscriminatory accessibility by the broadest number of users and vendors of communications products and services to public telecommunications networks....”

4. Competition

In order to enable vigorous competition among last-mile providers of broadband services, including in rural areas, no governmental subsidy should be provided to purveyors of last-mile services.⁴³ Such an approach would represent an unnecessarily deep intrusion by regulatory forces into the commercial marketplace. Instead, public support should be focused

⁴³ See Notice of Inquiry, ¶ 49.

on deploying carrier-neutral backbone broadband networks. Private competition in the last-mile sector will, in turn, work to produce services and prices reasonably comparable to those available in urban areas.

In this regard, one policy followed by RUS under its 2008 Farm Bill broadband loan program that, in KKCC's view, has an adverse impact on spurring competition in rural markets is the agency's requirement that recipients of loan support must provide end user services.⁴⁴ KKCC submits that RUS broadband loan support for backbone network operators would have a positive effect on encouraging the growth of last-mile broadband providers, particularly where the backbone operator agrees not to compete with its last-mile customers but operates as a neutral carrier's carrier. Since RUS exists to serve rural areas and rural users, it makes sense for the agency to support robust middle-mile solutions that are a critical platform for competition among last-mile retail operators. Given the growth in file sizes transiting the Internet, no last-mile service will be adequate without robust middle-mile support.

IV. AFFORDABILITY AND MAXIMUM UTILIZATION

KKCC agrees that, in addition to the availability of facilities capable of delivering high-speed Internet content, the affordability of services made available thereby is material to their accessibility.⁴⁵ As addressed above, in rural, hard-to-serve areas, with widely dispersed populations, the issue of affordability is particularly acute. Further, KKCC believes the standard of "affordability" should be that which has already been established through the High-Cost Support universal service program: the average cost of service supplied to the end user on a national scale. The universal service program can be extended to help make broadband access in high-cost areas affordable by lowering the end user cost of such access

⁴⁴ *Id.*, ¶ 50.

⁴⁵ *Id.*, ¶¶ 52, 54.

to roughly the national average of such per-customer costs. Similarly, extension of the Linkup and Lifeline programs can be employed to make broadband access “affordable” to qualifying low-income users.⁴⁶

V. SPECIFIC POLICY GOALS OF THE NATIONAL BROADBAND PLAN

The Recovery Act mandates that the national broadband plan is to include a plan for use of broadband infrastructure to advance a series of social objectives, including community development, health care delivery, education, worker training, private sector investment, job creation, and public safety and homeland security.⁴⁷ There is no question that these are urgently felt needs for the increasingly vulnerable population of western Alaska, where small communities exist under adverse climatic conditions largely isolated from one another, as well as from the more populated sectors of the state and the lower 48 states. The inability of numerous of these small villages to sustain adequate educational and health care facilities serves as a disincentive to younger residents remaining in these communities. Those that do remain suffer from extraordinarily high poverty levels. Suicide is experienced among younger residents at an alarming rate. In short, many of the communities in western Alaska are socially and economically destabilized, putting at risk the native heritage of the region.⁴⁸

The introduction of broadband facilities in this region at affordable rates bears the prospect of reversing this desultory trend. Broadband deployment has been demonstrated as

⁴⁶ Less clear to KKCC is the need for a federally supported program to improve the digital literacy of Americans. *Id.*, ¶ 55. It would appear that digital literacy would be a natural outgrowth of the availability of effective broadband facilities at affordable rates, particularly among younger users. To the extent training in digital access skills is required for older users, the national plan could encourage but leave that responsibility to state and local communities, as determined appropriate within their jurisdictions.

⁴⁷ Recovery Act, § 6001(k)(2)(D).

⁴⁸ See Fuel Costs, Migration, and Community Viability, Final Report, prepared for the Denali Commission by the Institute of Social and Economic Research, University of Alaska, May 12, 2008; “Suicide Rate Rises for 4th Consecutive Year,” Anchorage Daily News, May 27, 2009. See generally U.S. Senate Committee on Indian Affairs, Oversight Hearing on Youth Suicide in Indian Country, February 26, 2009.

an effective means of delivering educational resources to remote communities through distance learning, thereby obviating the need for students to choose between education and leaving their homes.⁴⁹ Similarly, the Commission's Rural Health Care support program, though still underutilized, demonstrates that broadband can be successfully employed to bring modern healthcare to residents in remote rural communities.⁵⁰ The availability of broadband will also enable indigenous rural businesses to reach larger markets through e-commerce, and will spur investment in new forms of enterprise, such as call and support centers that would otherwise be placed offshore. These collective capabilities should work to stabilize and encourage the growth of local communities.⁵¹ Nor is the role of social networking made available by broadband access to be underestimated as a means of overcoming isolation and enabling residents of separate communities to bond with one another on issues of common heritage.⁵²

But the national broadband plan cannot realistically be all things to all people. As the Recovery Act has instructed, the Commission is to analyze "the most effective and efficient mechanisms for ensuring broadband access by all people in the United States," and is to provide a "detailed strategy for achieving affordability of such service...."⁵³ The Commission, therefore, should consider how national resources should most efficiently be employed and applied where needed, and to what extent should state and local governments be asked to partner in the plan.

⁴⁹ Rural Broadband Report, ¶¶ 130-33.

⁵⁰ See, e.g., News Release, "FCC Update on Rural Healthcare Pilot Program Initiative," April 16, 2009.

⁵¹ Notice of Inquiry, ¶ 80.

⁵² See *id.*, ¶ 70.

⁵³ Recovery Act, § 6001(k)(2)(A), (B).

KKCC submits that the plan should recognize the importance for public support for the deployment of backbone broadband networks serving rural communities where the private sector has not succeeded in making a business case for such development. The plan should also call for extension of the existing High-Cost and Low-Income Support universal service programs to recognize broadband as a supported service. The plan should include the continuance of the existing E-Rate and Rural Health Care support programs. By making broadband infrastructure available in rural, hard-to-serve areas through these support mechanisms, the plan would encourage the evolution of private competition in the last mile to deliver broadband services to residents and businesses in these areas. State and local governments should, in turn, be encouraged to do their part in maximizing the usefulness of these resources, through such initiatives as worker training, encouraging new industry and commerce, and public safety implementation.

VI. RELATIONSHIP BETWEEN RECOVERY ACT AND OTHER STATUTORY PROVISIONS

As addressed earlier in these comments, KKCC believes the national broadband plan should build on and represent a continuum of previously articulated Congressional goals and policies. Rather than representing in any manner a departure from existing national policy objectives, the broadband plan should serve as a reaffirmation and rationalization of existing, separate statutory programs. This reaffirmation should include recognizing the need for public support of infrastructure in hard to serve areas in which private enterprise is unable to justify a commercial case for investment.

The authorization for RUS support of rural broadband networks in the 2002 and 2008 Farm Bills is a key building block of the national broadband plan since, as has been observed above, the heart of such a plan must be its rural component because the unserved and

underserved areas of the country are overwhelmingly rural.⁵⁴ Development of the plan is further informed by Section 254(b) of the Communications Act, which declares that consumers in all regions of the country, including rural ones, should have access to advanced telecommunications and information services that are “reasonably comparable” to services provided in urban areas and at reasonably comparable rates.⁵⁵ This statute, together with Section 706 of the Communications Act,⁵⁶ establish a standard of reasonable comparability in the availability of broadband facilities in all parts of the country to ensure that no geographic Digital Divide is permitted to endure, and to commit the country to a goal of universal broadband availability. Finally, Section 230(b) of the Act establishes a national commitment to “preserve the vibrant and competitive free market that presently exists for the Internet.”⁵⁷ Each of these Congressional objectives will find realization in a national broadband plan that recognizes the critical need for publicly supported backbone networks delivering broadband to unserved areas, particularly on a carrier-neutral basis that in turn encourages the emergence of private, competitive last-mile broadband content markets.

⁵⁴ Notice of Inquiry, ¶ 109.

⁵⁵ *Id.*, ¶ 111.

⁵⁶ *Id.*, ¶ 110.

⁵⁷ *Id.*

VII. CONCLUSION

KKCC encourages the Commission to incorporate the comments submitted herein in developing its national broadband plan pursuant to the Recovery Act's mandate.

Respectfully submitted,



Heather H. Grahame, Esq.
Dorsey & Whitney, LLP
1031 West 4th Avenue
Suite 600
Anchorage, AK 99501

Stefan M. Lopatkiewicz
Dorsey & Whitney, LLP
1050 Connecticut Avenue, N.W.
Suite 1250
Washington, D.C. 20036

Counsel to Kodiak Kenai Cable Company, LLC

June 8, 2009